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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/625,090 07/22/2003 George A. Scheele JHU1710-4 8783

28213 7590 02/05/2008

DLA PIPER US LLP
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SUITE 1100
SAN DIEGO, CA 92121-2133

EXAMINER

LE, EMILY M

ART UNIT	PAPER NUMBER
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1648

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02/05/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
10625090	7/22/03	SCHEELE ET AL.	JHU1710-4

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EXAMINER

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Commissioner for Patents

1. Newly submitted claims are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The originally elected invention is directed to a method of treating viral, HSV-1 infection in a mammal with the administration of a cholesterol sequestering agent; whereas, the newly submitted claims, as presented, are directed to a method of reducing viral load of a herpes infection in an interstitial space of a mammal with the administration of beta-cyclodextrin and measuring the reduction of the viral load.

2. These inventions are directed to related processes. The related inventions are distinct if the (1) the inventions as claimed are either not capable of use together or can have a materially different design, mode of operation, function, or effect; (2) the inventions do not overlap in scope, i.e., are mutually exclusive; and (3) the inventions as claimed are not obvious variants. See MPEP § 806.05(j). In the instant case, the inventions as claimed have differing mode of operation and effect, as summarized above. Furthermore, the inventions as claimed do not encompass overlapping subject matter and there is nothing of record to show them to be obvious variants.

3. Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, the claims are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

/Emily M. Le/
Patent Examiner
Art Unit 1648